



STATE OF CALIFORNIA

Arnold Schwarzenegger, Governor

GAMBLING CONTROL COMMISSION

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TITLE 4. CALIFORNIA GAMBLING CONTROL COMMISSION

NOTICE OF PROPOSED RULEMAKING

Chapter 10 – Discipline, Hearings, and Decisions

The California Gambling Control Commission (“Commission”) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION: The Commission proposes to adopt sections 12550, 12552, 12554, 12556, 12558, 12560, 12562, 12564, 12566, 12568, and 12572 of Title 4 of the California Code of Regulations, concerning discipline (via accusations and hearings) of licensees, registrants, permit holders, or holders of findings of suitability or other approvals, settlements, and the adoption of precedential decisions.

PUBLIC HEARING: April 20, 2006

The Commission will hold a public hearing starting at 10 a.m. on Thursday, April 20, 2006, at 2399 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833-4231. The room is wheelchair accessible. Please call Lisa King, Assistant to the Commission, at 916-263-0493 or TDD 1-800-345-4275, to request any special accommodations for persons with disabilities. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest.

WRITTEN COMMENT PERIOD: March 3, 2006 through April 20, 2006

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commission at any time during the 45-day public comment period. To be considered for summary and response, all written comments must be received no later than 5:00 p.m., April 20, 2006 (the day of the public hearing).

Written comments for the Commission’s consideration should be directed to:

Heather Hoganson, Counsel, California Gambling Control Commission,
2399 Gateway Oaks Drive, Suite 100 Sacramento, CA 95833-4231;
Fax: 916-263-0452, E-mail: hhoganson@cgcc.ca.gov

AUTHORITY AND REFERENCE

Authority for the proposed regulations is provided by various provisions of the Gambling Control Act, which may be found in Business and Professions (“B & P”) Code sections 19800--19980. In particular, B & P Code sections 19811, 19823, 19824, 19840, 19841, 19850, 19853(a)(3), 19854, 19912, 19914, 19920, 19922, 19924, 19930, 19931, 19942, 19971, and 19984.

The reference citations are as follows: the proposed regulations implement, interpret, or make specific B & P Code sections 19824, 19840, 19844, 19852, 19857, 19858, 19859, 19862, 19863, 19870, 19875, 19878, 19880, 19912, 19913, 19914, 19920, 19922, 19923, 19924, 19930, 19931, 19941, and 19942, and Government Code section 11425.60.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

Under the Gambling Control Act, the California Gambling Commission has the authority to discipline the Commission’s regulated community, which includes licensees, registrants, and permit holders, as well as findings of suitability and approval. Pursuant to the Administrative Procedure Act, the Commission is promulgating disciplinary guidelines so that consistent and uniform administrative penalties are available in order to encourage and reinforce voluntary compliance with the law. These regulations provide for protection of the public, notice to the industry of how violations of law will be handled by the Commission, and procedures and guidelines to ensure that discipline is administered in a fair, reasoned, and consistent fashion, in a manner authorized by law.

Increased or decreased discipline may be recommended based on facts of individual cases where supported by aggravating or mitigating circumstances.

The Administrative Procedure Act also allows for the adoption of precedential decisions; these regulations clarify how that will be handled at the Commission.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: These regulations do not impose a mandate on local agencies or school districts.

Cost or savings to any state agency: None.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code section 17561: None

Other non-discretionary cost or savings imposed upon local agencies: None

Cost or savings in federal funding to the state: None

Cost impact on representative private person or business: A licensee or registrant may be liable for penalties and/or costs if found to have violated the law regarding controlled gambling.

Impact on Business: The Commission has made an initial determination that the proposed regulatory changes will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Significant effect on housing costs: The Commission has made an initial determination that the proposed regulatory action would not affect housing costs.

Effect on small business: The Commission has made an initial determination that, in the event that a cardroom is considered a small business, the effect these regulations will have on small business will be minor.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Commission must determine that no reasonable alternative considered by the Commission or that has otherwise been identified and brought to the attention of the Commission would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

ASSESSMENT REGARDING CREATION OR ELIMINATION OF JOBS IN CALIFORNIA

The Commission has made an assessment and determined that the adoption of the proposed regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

CONTACT PERSONS

Inquiries concerning the substance of the proposed action should be directed to:

Heather Hoganson, Counsel, California Gambling Control Commission,
2399 Gateway Oaks Drive, Suite 100 Sacramento, CA 95833-4231
Telephone: 916-263-0490, Fax: 916-263-0452, E-mail: hhoganson@cgcc.ca.gov.

Requests for a copy of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, or other technical information upon which the rulemaking is based should be directed to:

Pam Ramsay, California Gambling Control Commission,
2399 Gateway Oaks Drive, Suite 100 Sacramento, CA 95833-4231
Telephone: 916-263-8111, Fax: 916-263-0499.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Commission will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at the office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons. A copy may be obtained by contacting Pam Ramsay at the address or telephone number listed above or accessing the Commission's website at <http://www.cgcc.ca.gov>. Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the Regulations Coordinator or viewed on the website.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing, the Commission may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly indicated, will be made available to the public for at least 15 days prior to the date on which the Commission adopts the regulation. Requests for copies of any modified regulation should be sent to the attention of Pam Ramsay at the address indicated above.

The Commission will accept written comments on the modified regulation for 15 days after the date on which it is made available.

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12550. Purpose and Scope

- (a) The purpose of this chapter is to set forth disciplinary procedures and guidelines applicable to the holder of any license, registration, permit, finding of suitability, or approval issued by the Commission.
- (b) The disciplinary guidelines in this chapter are designed to promote fairness and flexibility in dealing with a wide range of disciplinary scenarios. Variation in penalties based on circumstances and factors in aggravation or mitigation are part of this disciplinary scheme to promote compliance with applicable laws and regulations.
- (c) Nothing in this chapter is intended to limit the authority of the Commission to issue orders of summary suspension pursuant to Business and Professions Code section 19913, or to limit the authority of the Division to issue emergency orders pursuant to Business and Professions Code section 19931.
- (d) Nothing in this chapter shall be construed to prevent the Commission from ordering an investigation by Commission staff on a matter brought before the Commission; instituting a civil action in any superior court to restrain a violation of the Gambling Control Act, pursuant to Business and Professions Code section 19824, subdivision (g); referring a matter to the Attorney General or any district attorney or city attorney for civil, criminal or administrative action; or requesting the Division of Gambling Control to conduct an investigation pursuant to information gathered independently by the Commission or supplied to it by a third party.
- (e) Nothing in this chapter precludes any person from notifying the Commission or the Division regarding any violations of law or reasons why the holder of any license, registration, permit, finding of suitability, or approval should be disciplined.
- (f) Nothing in this chapter precludes the Division, in its discretion, from issuing warning notices, notices to cure, advisory letters regarding violations or possible violations of law, or from withdrawing such upon further investigation.

Authority: Sections 19811, 19823, 19824, 19840, 19841, 19850, 19853(a)(3), 19854, 19912, 19914, 19920, 19922, 19924, 19930, 19971, and 19984 of the Business and Professions Code.

Reference: Sections 19913, 19930, and 19931 of the Business and Professions Code.

12552. Settlements

- (a) At any time, the Commission and respondent may enter into a settlement of the accusation as provided in this section.
- (b) Any settlement of an accusation shall include a plan for immediate abatement of the violation, a plan for immediate compliance with all statutory and regulatory requirements, an agreement to any penalty imposed, and shall be a full and final settlement of the violation including a complete waiver of all judicial or other review unless otherwise agreed to by the Commission.
- (c) Any settlement of an accusation shall be submitted by the Division for approval by the Commission at a noticed Commission meeting. The Commission shall have final approval authority concerning any such settlement. If the Commission rejects a settlement or agreement, and no amended agreement or settlement is reached before two additional regularly noticed Commission meetings have concluded, or sixty days have elapsed, whichever is later, the Division shall proceed with the formal hearing process under this Chapter.

Authority: Sections 19811, 19823, 19824, 19840, 19841, 19850, 19853(a)(3), 19854, 19912, 19920, 19930, 19942, and 19984 of the Business and Professions Code.

Reference: Sections 19824, 19826, 19827, 19840, and 19930 of the Business and Professions Code.

12554. Formal Hearing Process

- (a) Upon the filing with the Commission of an accusation by the Division recommending revocation, suspension, or other discipline of a holder of a license, registration, permit, finding of suitability, or approval, the Commission shall proceed under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
- (b) In the event that the Division cannot present the accusation, the Commission may request outside counsel or representation by another state agency or may adequately segregate one or more Commission staff members from the Commissioners and Commission legal unit to present the accusation.
- (c) The Administrative Law Judge and Commission shall base their decisions on written findings of fact, including findings concerning any relevant aggravating or mitigating factors. Findings of fact shall be based upon a preponderance of the evidence standard. The "preponderance of the evidence standard" is such evidence as when considered and compared with that opposed to it, has more convincing force, and produces a belief in the mind of the fact-finder that what is sought to be proved is more likely true than not true.

(d) Upon a finding of a violation of the Gambling Control Act, any regulations adopted pursuant thereto, any law related to gambling or gambling establishments, violation of a previously imposed disciplinary or license condition, or laws whose violation is materially related to suitability for a license, registration, permit, or approval, the Commission may do any one or more of the following:

- (1) Revoke the license, registration, permit, finding of suitability, or approval;
- (2) Suspend the license, registration, or permit;
- (3) Order the licensing authority of a city, county, or city and county to revoke a work permit, pursuant to Business and Professions Code section 19914, subdivision (a),
- (4) Impose any condition, limitation, order, or directive (including but not limited to a directive to divest an interest in a business entity pursuant to Business and Professions Code, section 19879);
- (5) Impose any fine or monetary penalty consistent with Business and Professions Code sections 19930, subdivision (c), and 19943, subdivision (b);
- (6) Stay, in whole or in part, the imposition of a revocation or suspension against the holder of a license, registration, work permit, finding of suitability, or approval, or
- (7) Order the holder to pay a monetary penalty in lieu of all or a portion of a suspension. Within the guidelines of Business and Professions Code sections 19930, subdivision (c), and 19943, subdivision (b):
 - (A) If the respondent is an owner of a gambling establishment, the monetary penalty shall be equivalent of Fifty percent of the average daily gross gaming revenue, but not less than \$500, for the number of days for which the suspension is stayed.
 - (B)

OPTION 1: If the respondent is an owner of a third-party provider of proposition player services, the monetary penalty shall be the sum of \$500 plus the total of **\$100** multiplied by the maximum number of tables for which proposition player services have been contracted at the gambling establishment where the violation was charged, which sum shall be multiplied by the number of days for which the suspension is stayed.

OPTION 2: If the respondent is an owner of a third-party provider of proposition player services, the monetary penalty shall be the sum of

1 \$500 plus the total of **\$300** multiplied by the maximum number of
2 tables for which proposition player services have been contracted at
3 the gambling establishment where the violation was charged, which
4 sum shall be multiplied by the number of days for which the
5 suspension is stayed.¹

6 (C) If the respondent is an owner of a gambling business, the
7 monetary penalty shall be \$1500 per day for the number of days for
8 which the suspension is stayed.

9 (D) If the respondent is a key employee of a gambling establishment
10 or a supervisor of a gambling business or third-party provider of
11 proposition player services, the monetary penalty shall be \$100 per
12 day for the number of days for which the suspension is stayed.

13 (E) If the respondent is a holder of a work permit, a player or other
14 employee of a gambling business or third-party provider of
15 proposition player services, or a person not otherwise described
16 above, the monetary penalty shall be \$50 per day for the number of
17 days for which the suspension is stayed.

18 (e) If a person's state gambling license for a gambling establishment is revoked by
19 the Commission pursuant to this chapter, the Commission may stay such
20 revocation for a reasonable period of time to allow such person to sell or divest
21 himself or herself of such person's ownership interest in the gambling
22 establishment, provided that after the date on which the revocation is stayed by
23 the Commission, such person shall not be entitled to, realize, or receive any
24 profits, distributions, or payments that might directly or indirectly be due to such
25 person or which arise out of, are attributable to, or are derived from controlled
26 gambling.

27 (f) If an owner of a third-party provider of proposition player services or gambling
28 business has his or her owner's license or registration revoked by the
29 Commission pursuant to this chapter, the Commission may stay such revocation
30 for a reasonable period of time to allow such person to sell or divest himself or
31 herself of such person's ownership interest in the third-party provider of
32 proposition player services or gambling business, provided that after the date on
33 which the revocation is stayed by the Commission, such person shall not be
34 entitled to, realize, or receive any profits, distributions, or payments that might
35 directly or indirectly be due to such person or which arise out of, are attributable
36 to, or are derived from the provision of proposition player services.

¹ Note to Reader: This section (Option 1 and 2) will be modified based upon comments received during the 45-day notice and comment period and the public hearing.

- (g) For decisions concerning a gambling establishment, findings shall be made regarding the number of tables in operation at the establishment and the annual gross gaming revenue of the establishment.
- (h) For decisions concerning an owner of a third-party provider of proposition player services, findings shall be made regarding the maximum number of tables for which proposition player services have been contracted at the gambling establishment where the violation was charged.
- (i) Any order to pay the costs of investigation or prosecution of the case shall be fixed pursuant to Business and Professions Code section 19930, subdivision (d).
- (j) For multiple violations, or for suspensions imposed by other jurisdictions based on the same violations, the decision shall state whether any Commission-imposed suspensions shall run consecutively or concurrently.

Authority: Sections 19811, 19823, 19824, 19840, 19850, 19853(a)(3), 19854, 19912, 19914, 19920, 19922, 19924, 19930, 19932, 19971, and 19984 of the Business and Professions Code.

Reference: Sections 19857, 19858, 19859, 19862, 19870, and 19878 of the Business and Professions Code, Section 11045 of the Government Code, and Section 10335 of the Public Contract Code.

12556. Factors in Mitigation or Aggravation of Penalty

If presented by complainant or respondent, the Commission shall consider the following factors in mitigation or aggravation of the penalty imposed:

- (a) Violation of any previously imposed or agreed upon condition, restriction or directive.
- (b) Whether or not the conduct was knowing, willful, reckless, or inadvertent.
- (c) The extent to which respondent cooperated with the Division or Commission during the investigation of the violation.
- (d) The extent to which respondent was honest with the Division or Commission during the investigation of the violation.
- (e) The extent to which respondent is willing to reimburse or otherwise make whole any person who has suffered a loss due to the violation.
- (f) Whether respondent has initiated remedial measures to prevent similar violations.
- (g) The extent to which respondent realized an economic gain from the violation.
- (h) Disciplinary history of respondent, repeated offenses of the same or similar nature, or evidence that the unlawful act was part of a pattern or practice.
- (i) Any other aggravating factors, including any factors which the Commission determines to bear on the health, safety, or welfare of the public.

- (j) The extent to which there was actual or potential harm to the public or to any patron.
- (k) The extent to which an owner licensee or key employee of a gambling establishment, owner or supervisor of a third-party provider of proposition player services, or owner or supervisor of a gambling business exercised due diligence in management or supervision.
- (l) If the violation was caused by an employee of a third-party provider of proposition player services or gambling business, the extent to which the owner licensee, licensee, or registrant knew or should have known of the employee's improper conduct; the level of authority of the employee involved and the extent to which the employee acted within the scope of his or her authority in committing the violation.
- (m) If the violation was caused by a third-party provider of proposition player services or gambling business, the extent to which the owner licensee or gambling establishment knew or should have known of the improper conduct.
- (n) If the violation was caused by an independent contractor of a gambling business, the extent to which the gambling business owner licensee, licensee, or registrant knew or should have known of the independent contractor's improper conduct; the level of authority of the independent contractor involved and the extent to which the independent contractor acted within the scope of his or her authority in committing the violation.
- (o) If the violation was caused or committed by a third party, the extent to which the owner licensee, licensee, or registrant knew or should have known of the third party's improper conduct.
- (p) Any relevant evidence offered by respondent in mitigation of the violation.

Authority: Sections 19811, 19823, 19824, 19840, 19850, 19853(a)(3), 19854, 19912, 19914, 19920, 19922, 19924, 19930, 19932, 19971, and 19984 of the Business and Professions Code.

Reference: Sections 19857, 19858, 19859, 19862, 19870, and 19878 of the Business and Professions Code.

12558. Disciplinary Guidelines for Holders of Work Permits

Pursuant to Business and Professions Code, section 19914, the holder of a work permit shall be subject to a minimum penalty of a three-day suspension, which may be stayed on terms and conditions and any monetary penalty as described in section 12554(d)(7) of this chapter, up to a maximum penalty of revocation by the Commission if the Commission finds that the holder:

- (a) Engaged in or committed a prohibited act specified in Business and Professions Code 19914, subdivision (a).

(b) Does not currently meet any criterion for eligibility or qualification.

(c) Violated or is in violation of any condition, limitation or directive previously imposed on the work permit.

(d) Violated or is in violation of any Commission or Division regulations, including those regulations regarding work permits in the California Code of Regulations, title 4, division 18, chapter 2 (commencing with section 12100).

Authority: Sections 19811, 19823, 19824, 19911, 19912, 19914, 19920, 19930, 19932, and 19971 of the Business and Professions Code.

Reference: Section 19878 of the Business and Professions Code.

12560. Disciplinary Guidelines for Third-party providers of proposition player services licensees or registrants

(a) If the Commission finds that an owner of a third-party provider of proposition player services, as that term is used in California Code of Regulations, title 4, section 12200, is out of compliance with any mandatory duty specified in or imposed by the Gambling Control Act or any Commission or Division regulation, which is not otherwise listed in these disciplinary guidelines, the penalty shall be one day of suspension of proposition player services from either specified gambling establishments or all gambling establishments, as the circumstances and factors in mitigation or aggravation apply, which may be stayed by the Commission upon the payment of a monetary penalty as follows:

(1) *If the third party provider of proposition player services has 5 or less licensees or registrants, the penalty shall be between \$50 and \$100, based upon factors in mitigation and aggravation.*

(2) *If the third party provider of proposition player services has 6 to 12 licensees or registrants, the penalty shall be between \$100 and \$2000, based upon the factors in mitigation and aggravation.*

(3) *If the third party provider of proposition player services has 13 or more licensees or registrants, the penalty shall be between \$2000 and \$10000, based upon the factors in mitigation and aggravation.²*

(b) A license or registration granted by the Commission for an owner of a third-party provider of proposition player services, as that term is used in California Code of Regulations, title 4, section 12200, shall be subject to a minimum discipline of suspension of seven days from either specified gambling establishments or all gambling establishments, as the circumstances and factors in mitigation or aggravation apply, and a maximum discipline of revocation, which

² Note to Reader: This section will be modified based upon comments received during the 45-day notice and comment period and the public hearing.

1 may be stayed on terms and conditions and any monetary penalty as described
2 in section 12554 (d)(7) of this chapter, if the Commission finds that:

- 3 (1) The owner has violated or is out of compliance with any conditions,
4 limitations, orders, or directives imposed by the Commission, either as
5 part of an initial grant of license or registration, renewal of such, or
6 pursuant to disciplinary action,
- 7 (2) The owner has been found, by any administrative tribunal or court, to
8 have violated or be in violation of any law involving or relating to
9 gambling,
- 10 (3) The owner has intentionally misrepresented a material fact on an
11 application or supplemental application for licensure or registration,
- 12 (4) The owner has engaged in any dishonest, fraudulent, or deceptive
13 activities in connection with controlled gambling or the provision of
14 proposition player services,
- 15 (5) The owner has violated any law or ordinance with respect to campaign
16 finance disclosure or contribution limitations, pursuant to Business and
17 Professions Code, section 19982,
- 18 (6) The owner has violated California Code of Regulations, title 4,
19 regarding annual fees for third party providers of proposition player
20 services,
- 21 (7) The owner has provided proposition player services in violation of
22 California Code of Regulations, title 4, section 12200.7, subdivision
23 (b)(9) or (b)(11),
- 24 (8) The owner has failed to fully disclose financial arrangements in violation
25 of California Code of Regulations, title 4, section 12200.7, subdivision
26 (b)(15),
- 27 (9) The primary owner has failed to report cheating, in violation of
28 California Code of Regulations, title 4, section 12200.7, subdivision
29 (b)(18),
- 30 (10) The owner has purchased, leased, or controlled equipment in
31 violation of California Code of Regulations, title 4, section 12200.7,
32 subdivision (b)(21),
- 33 (11) The owner has failed to have the proposition player contract
34 approved, in violation of California Code of Regulations, title 4, section
35 12200.7, subdivision (b)(22), or section 12200.9,
- 36 (12) The owner has authorized or provided payment to or receipt by
37 the gambling establishment, in violation of California Code of
38 Regulations, title 4, section 12200.7, subdivision (c),

- 1 (13) The owner has been cheating, or has induced or instructed
2 another to cheat, pursuant to Penal Code, sections 337t, 337u, 337v,
3 337w, or 337y,
- 4 (14) The owner has committed extortion (as that term is defined in
5 Chapter 7 of Title 13 of Part 1 of the Penal Code, commencing with
6 section 518),
- 7 (15) The owner has committed loan-sharking (as that term is used in
8 Civil Code section 1916-3, subdivision (b)),
- 9 (16) The owner has conducted or negotiated illegal sales of controlled
10 substances (as that term is used in Chapter 1 (commencing with
11 Section 11000) of Division 10 of the Health and Safety Code) or
12 dangerous drugs (as that term is used in Business and Professions
13 Code, section 4022),
- 14 (17) The owner has committed bribery (as that term is used in Penal
15 Code section 67 or 67.5),
- 16 (18) The owner has committed money laundering (as that term is used
17 in Chapter 10 of Title 7 of Part 1 of the Penal Code, commencing with
18 Section 186.9),
- 19 (19) The owner has granted rebates to patrons without full disclosure,
20 in violation of California Code of Regulations, title 4, section 12200.7,
21 subdivision (19),
- 22 (20) The owner has violated the provisions regarding playing books
23 listed in California Code of Regulations, title 4, section 12200.13,
- 24 (21) The owner has committed any of the acts listed in California
25 Code of Regulations, title 4, section 12200.18, subdivisions (a), (b), (d),
26 (e), (f), (i), (j), (l), (m), or (n), or
- 27 (22) The owner is providing services as a gambling business without
28 first obtaining a gambling business registration or license, in violation of
29 California Code of Regulations, title 4, section 12220 et seq.
- 30 (c) A supervisor, player, or other employee, as those terms are used in California
31 Code of Regulations, title 4, section 12200, shall be subject to a minimum
32 monetary penalty of \$100 and/or a suspension of three days and a maximum
33 penalty of revocation if the Commission finds that:
- 34 (1) The supervisor, player, or other employee has violated or is out of
35 compliance with conditions, limitations, or orders or directives imposed
36 by the Commission, either as part of an initial grant of license or
37 registration, renewal of such, or pursuant to disciplinary action,

- (2) The supervisor, player, or other employee has engaged in any dishonest, fraudulent, or deceptive activities in connection with controlled gambling or the provision of proposition player services,
 - (3) The supervisor, player, or other employee has committed any act punishable as a crime, not otherwise listed in these disciplinary guidelines, which substantially relates to the duties and qualifications of the licensee or registrant, or which occurred in a gambling establishment or the associated adjacent property, or
 - (4) The supervisor, player, or other employee has engaged in any conduct on the premises of the gambling establishment or in connection with controlled gambling or the provision of proposition player services which is inimical to the health, welfare, or safety of the general public.
 - (5) The supervisor, player, or other employee has either failed to wear a badge, worn a badge which was covered, worn a false or altered badge or a badge issued for a different gambling establishment, worn another person's badge, or worn an expired badge,
 - (6) The supervisor, player, or other employee has engaged in fighting or has intentionally provoked a patron or employee at a gambling establishment,
 - (7) The supervisor, player, or other employee has maliciously or willfully destroyed or damaged the property of the gambling establishment, employee, or patron,
 - (8) The supervisor, player, or other employee has accepted tips, gratuities, complimentaries, or gifts from gambling establishment staff or patrons
 - (9) The supervisor, player, or other employee has committed any of the acts listed in California Code of Regulations, title 4, section 12220.18, subdivision (a), or
 - (10) The supervisor, player, or other employee has failed to comply with California Code of Regulations, title 4, section 12200.21.
- (d) A supervisor, player, or other employee, as those terms are used in California Code of Regulations, title 4, section 12200, shall be subject to a minimum monetary penalty of \$300 and/or a suspension of 7 days and a maximum penalty of revocation if the Commission finds that:
- (1) The supervisor, player, or other employee has intentionally misrepresented a material fact on an application, request to convert, or supplemental application for licensure, registration, or approval,
 - (2) The supervisor, player, or other employee has been cheating, pursuant to Penal Code, section 337x,

- (3) The supervisor, player, or other employee has committed extortion (as that term is defined in Chapter 7 of Title 13 of Part 1 of the Penal Code, commencing with section 518),
- (4) The supervisor, player, or other employee has committed loan-sharking (as that term is used in Civil Code section 1916-3, subdivision (b)),
- (5) The supervisor, player, or other employee has conducted or negotiated illegal sales of controlled substances (as that term is used in Chapter 1 (commencing with Section 11000) of Division 10 of the Health and Safety Code) or dangerous drugs (as that term is used in Business and Professions Code, section 4022),
- (6) The supervisor, player, or other employee has committed bribery (as that term is used in Penal Code section 67 or 67.5),
- (7) The supervisor, player, or other employee has committed money laundering (as that term is used in Chapter 10 of Title 7 of Part 1 of the Penal Code, commencing with Section 186.9),
- (8) The supervisor, player, or other employee has granted rebates to patrons without full disclosure, in violation of California Code of Regulations, title 4, section 12200.7, subdivision (19), or
- (9) The supervisor, player, or other employee has committed any of the acts listed in California Code of Regulations, title 4, section 12200.18 subdivisions (b), (c), (d), (f), (g), (h), (i), (j), or (k).
- (e) A license or registration granted by the Commission for an owner of a third-party provider of proposition player services, or for a supervisor, player, or other employee, as those terms are used in California Code of Regulations, title 4, section 12200, shall be subject to revocation if the Commission finds that:
- (1) The owner, supervisor, player, or other employee has been convicted of a felony or a crime of moral turpitude that would disqualify the holder from licensure, or
- (2) The owner, supervisor, player, or other employee no longer meets any criterion for eligibility, pursuant to California Code of Regulations, title 4, sections 12204 or 12200.11.
- Authority: Sections 19811, 19823, 19824, 19840, 19841, 19850, 19854, 19859, 19875, 19912, 19913, 19914, 19920, 19922, 19924, 19930, 19931 19971, and 19984 of the Business and Professions Code.
- Reference: Sections 19844, 19852, 19857, 19858, 19859, 19862, 19863, 19870, 19875, 19878, 19880, 19913, 19914, 19920, 19922, 19923, 19924, 19930, 19931, 19941 and 19942 of the Business and Professions Code.

1 **12562. Disciplinary Guidelines for Gambling business licensees or registrants**

2 (a) If the Commission finds that an owner of a gambling business, as that term is
3 used in California Code of Regulations, title 4, section 12220, is out of
4 compliance with any mandatory duty specified in or imposed by the Gambling
5 Control Act or any Commission or Division regulation, which is not otherwise
6 listed in these disciplinary guidelines, the penalty shall be one day of suspension
7 of gambling business services from either specified gambling establishments or
8 all gambling establishments, as the circumstances and factors in mitigation or
9 aggravation apply, which may be stayed by the Commission upon the payment of
10 a monetary penalty as follows:

- 11 (1) *If the gambling business has 5 or less licensees or registrants, the*
12 *penalty shall be between \$50 and \$100, based upon factors in*
13 *mitigation and aggravation.*
- 14 (2) *If the gambling business has 6 to 12 licensees or registrants, the*
15 *penalty shall be between \$100 and \$2000, based upon the factors in*
16 *mitigation and aggravation.*
- 17 (3) *If the gambling business has 13 or more licensees or registrants, the*
18 *penalty shall be between \$2000 and \$10000, based upon the factors*
19 *in mitigation and aggravation.*³

20 (b) A license or registration granted by the Commission for an owner of a
21 gambling business, as that term is used in California Code of Regulations, title 4,
22 section 12220, shall be subject to a minimum monetary penalty of \$2500 and/or
23 a discipline of suspension of seven days from either specified gambling
24 establishments or all gambling establishments, as the circumstances and factors
25 in mitigation or aggravation apply, and a maximum discipline of revocation by the
26 Commission if the Commission finds that:

- 27 (1) The owner has violated or is out of compliance with any conditions,
28 limitations, orders, or directives imposed by the Commission, either as
29 part of an initial grant of license or registration, renewal of such, or
30 pursuant to disciplinary action,
- 31 (2) The owner has been found, by any administrative tribunal or court, to
32 have violated or be in violation of any law involving or relating to
33 gambling,
- 34 (3) The owner has intentionally misrepresented a material fact on an
35 application or supplemental application for licensure or registration,

³ Note to Reader: This section will be modified based upon comments received during the 45-day notice and comment period and the public hearing.

- (4) The owner has engaged in any dishonest, fraudulent, or deceptive activities in connection with controlled gambling or the provision of proposition player services as a gambling business,
 - (5) The owner has violated any law or ordinance with respect to campaign finance disclosure or contribution limitations, pursuant to Business and Professions Code, section 19982,
 - (6) The owner has violated California Code of Regulations, title 4, regarding annual fees for gambling businesses,
 - (7) The owner has been cheating, or has induced or instructed another to cheat, pursuant to Penal Code, sections 337t, 337u, 337v, 337w, or 337y,
 - (8) The owner has committed extortion (as that term is defined in Chapter 7 of Title 13 of Part 1 of the Penal Code, commencing with section 518),
 - (9) The owner has committed loan-sharking (as that term is used in Civil Code section 1916-3, subdivision (b)),
 - (10) The owner has conducted or negotiated illegal sales of controlled substances (as that term is used in Chapter 1 (commencing with Section 11000) of Division 10 of the Health and Safety Code) or dangerous drugs (as that term is used in Business and Professions Code, section 4022),
 - (11) The owner has committed bribery (as that term is used in Penal Code section 67 or 67.5),
 - (12) The owner has committed money laundering (as that term is used in Chapter 10 of Title 7 of Part 1 of the Penal Code, commencing with Section 186.9),
 - (13) The owner is providing services as a gambling business without first obtaining a gambling business registration or license, in violation of California Code of Regulations, title 4, section 12220 et seq., or
 - (14) The owner has committed any of the acts listed in California Code of Regulations, title 4, section 12220.18, subdivisions (a), (b), (d), (e), (f), (l), or (m).
- (c) A supervisor, player, or other employee, as those terms are used in California Code of Regulations, title 4, section 12220, shall be subject to a minimum monetary penalty of \$100 and/or a suspension of three days and a maximum penalty of revocation if the Commission finds that:
- (1) The supervisor, player, or other employee has violated or is out of compliance with conditions, limitations, or orders or directives imposed by the Commission, either as part of an initial grant of license or registration, renewal of such, or pursuant to disciplinary action,

- (2) The supervisor, player, or other employee has engaged in any dishonest, fraudulent, or deceptive activities in connection with controlled gambling,
 - (3) The supervisor, player, or other employee has committed any act punishable as a crime, not otherwise listed in these disciplinary guidelines, which substantially relates to the duties and qualifications of the licensee or registrant, or which occurred in a gambling establishment or the associated adjacent property,
 - (4) The supervisor, player, or other employee has engaged in any conduct on the premises of the gambling establishment or in connection with controlled gambling which is inimical to the health, welfare, or safety of the general public.
 - (5) The supervisor, player, or other employee has either failed to wear a badge, worn a badge which was covered, worn a false or altered badge or a badge issued for a different gambling establishment, worn another person's badge, or worn an expired badge,
 - (6) The supervisor, player, or other employee has engaged in fighting or has intentionally provoked a patron or employee at a gambling establishment,
 - (7) The supervisor, player, or other employee has maliciously or willfully destroyed or damaged the property of the gambling establishment, employee, or patron,
 - (8) The supervisor, player, or other employee has accepted tips, gratuities, complimentaries, or gifts from gambling establishment staff or patrons,
 - (9) The supervisor, player, or other employee has committed any of the acts listed in California Code of Regulations, title 4, section 12220.18, subdivision (a), or
 - (10) The supervisor, player, or other employee has failed to comply with California Code of Regulations, title 4, section 12220.21.
- (d) A supervisor, player, or other employee, as those terms are used in California Code of Regulations, title 4, section 12220, shall be subject to a minimum penalty of a monetary penalty of \$300 and/or a suspension of 7 days and a maximum penalty of revocation if the Commission finds that:
- (1) The supervisor, player, or other employee has intentionally misrepresented a material fact on an application, request to convert, or supplemental application for licensure, registration, or approval,
 - (2) The supervisor, player, or other employee has been cheating, pursuant to Penal Code, section 337x,

- (3) The supervisor, player, or other employee has committed extortion (as that term is defined in Chapter 7 of Title 13 of Part 1 of the Penal Code, commencing with section 518),
- (4) The supervisor, player, or other employee has committed loan-sharking (as that term is used in Civil Code section 1916-3, subdivision (b)),
- (5) The supervisor, player, or other employee has conducted or negotiated illegal sales of controlled substances (as that term is used in Chapter 1 (commencing with Section 11000) of Division 10 of the Health and Safety Code) or dangerous drugs (as that term is used in Business and Professions Code, section 4022),
- (6) The supervisor, player, or other employee has committed bribery (as that term is used in Penal Code section 67 or 67.5),
- (7) The supervisor, player, or other employee has committed money laundering (as that term is used in Chapter 10 of Title 7 of Part 1 of the Penal Code, commencing with Section 186.9),
- (8) The supervisor, player, or other employee has committed any of the acts listed in California Code of Regulations, title 4, section 12220.18 subdivisions (c), (d), (f), (g), (h), (i), (j), or (k).
- (e) A license or registration granted by the Commission for an owner of a gambling business, or for a supervisor, player, or other employee, as those terms are used in California Code of Regulations, title 4, section 12220, shall be subject to revocation if the Commission finds that:
- (1) The owner, supervisor, player, or other employee has been convicted of a felony or a crime of moral turpitude that would disqualify the holder from licensure, or
- (2) The owner, supervisor, player, or other employee no longer meets any criterion for eligibility, pursuant to California Code of Regulations, title 4, sections 12224 or 12220.11.
- Authority: Sections 19811, 19823, 19824, 19840, 19841, 19850, 19853(a)(3), 19854, 19859, 19875, 19912, 19913, 19914, 19920, 19922, 19924, 19930, 19931, and 19971 of the Business and Professions Code.
- Reference: Sections 19844, 19852, 19857, 19858, 19859, 19862, 19863, 19870, 19875, 19878, 19880, 19913, 19914, 19920, 19922, 19923, 19924, 19930, 19931, 19941 and 19942 of the Business and Professions Code.

12564. Disciplinary Guidelines for Manufacturers or Distributors

A registration granted by the Commission for a manufacturer or distributor of gambling equipment shall be subject to suspension or revocation by the Commission if the Commission finds that the registrant has violated California Code of Regulations, title 4, section 12303, subdivision (b).

- 1
2 Authority: Sections 19801(g), 19811, 19823, 19824, 19827(a)(1), 19840, 19841(r), 19850, 19854,
3 19859, 19875, 19912, 19913, 19914, 19920, 19922, 19924, 19930, 19931, and 19971 of the
4 Business and Professions Code.
- 5 Reference: Sections 19844, 19852, 19857, 19858, 19859, 19862, 19863, 19870, 19875, 19878, 19880,
6 19913, 19914, 19920, 19922, 19923, 19924, 19930, 19931, 19941 and 19942 of the
7 Business and Professions Code.
- 8

9 **12566. Disciplinary Guidelines for Gambling Establishments**

10 (a) If the Commission finds that a gambling establishment is out of compliance with
11 any mandatory duty specified in or imposed by the Gambling Control Act or any
12 Commission or Division regulation, or any local ordinance, which is not otherwise
13 listed in these disciplinary guidelines, pursuant to Business and Professions
14 Code section 19922, the penalty shall be one day of suspension, stayed upon
15 the payment of a penalty, within the guidelines of Business and Professions
16 Code, sections 19930, subdivision (c), and 19943, subdivision (b), as follows:

17 (1) If the establishment has five tables or less and has an annual gross
18 gaming revenue up to and including \$10,000, the penalty shall be between
19 \$50 and \$100, based upon the factors in mitigation and aggravation.

20 (2) If the establishment has ten tables or less or has an annual gross gaming
21 revenue over \$10,000, up to and including \$200, 000, the penalty shall be
22 between \$100 and \$2000, based upon the factors in mitigation and
23 aggravation.

24 (3) If the establishment has more than ten tables or has an annual gross
25 gaming revenue over \$200,000, the penalty shall be between \$2000 and
26 \$10,000, based upon the factors in mitigation and aggravation.

27 (b) A state gambling license for a gambling establishment granted by the
28 Commission shall be subject to a minimum discipline of suspension for seven
29 days of normal business operation and a maximum discipline of revocation,
30 which may be stayed on terms and conditions and any monetary penalty as
31 described in section 12554(d)(7) of this chapter, if the Commission finds that the
32 establishment has:

33 (1) Violated or is out of compliance with conditions, limitations, or orders or
34 directives imposed by the Commission, either as part of an initial grant of
35 license or registration, renewal of such, or pursuant to disciplinary action,

36 (2) Been found, by any administrative tribunal or court, to have violated or be
37 in violation of any law involving or relating to gambling,

38 (3) Intentionally misrepresented a material fact on an application or
39 supplemental application for licensure or registration,

40 (4) Failed to maintain adequate financing for chips in use or for player banks,

- 1 (5) Failed to report the operation of unregistered gambling businesses when
2 the owners or management of the establishment knew or should have
3 known that these gambling businesses were operating in the
4 establishment,
- 5 (6) Concealed or did not disclose ownership, interest, or key employee status,
6 pursuant to Business and Professions Code, sections 19850, 19851,
7 19853, 19854, 19855, 19883, or 19901,
- 8 (7) Violated Business and Professions Code, section 19878 (contract with,
9 employment of, services provided by person(s) with denied, suspended, or
10 revoked license or registration),
- 11 (8) Violated Business and Professions Code, section 19912 (failure to have
12 valid work permit),
- 13 (9) Violated Business and Professions Code, section 19921 (failure to exclude
14 persons under 21 from access to gambling areas),
- 15 (10) Violated Business and Professions Code, section 19924 (failure to
16 maintain security controls),
- 17 (11) Violated Business and Professions Code, section 19941 (failure to
18 prohibit persons under 21 from gambling, loitering, being employed in
19 gambling areas, or using fraudulent identification to gamble, loiter, or be
20 employed),
- 21 (12) Violated Business and Professions Code, section 19942 (willful failure
22 to report or pay license fee),
- 23 (13) Violated any law or ordinance with respect to campaign finance
24 disclosure or contribution limitations, pursuant to Business and Professions
25 Code, section 19982,
- 26 (14) Provided false or intentionally incomplete financial data, in violation of
27 California Code of Regulations, title 4, chapter 7, article 4 (commencing
28 with section 12400), regarding accounting and financial reporting,
- 29 (15) Refused to allow Division or Commission inspection of records or
30 information required to be maintained pursuant to California Code of
31 Regulations, title 4, chapter 7, article 4 (commencing with section 12400),
32 regarding accounting and financial reporting,
- 33 (16) Violated California Code of Regulations, title 11, section 2050,
34 subsection (a) (failure to maintain owner licensee or key employee on
35 premises),
- 36 (17) Violated California Code of Regulations, title 11, section 2052 (failure to
37 furnish information regarding employees), or
- 38 (18) Violated California Code of Regulations, title 11, section 2070
39 (unsuitable gaming activities).

- 1 Authority: Sections 19811, 19823, 19824, 19840, 19841, 19850, 19853(a)(3), 19854, 19859, 19875,
2 19912, 19913, 19914, 19920, 19922, 19924, 19930, 19931 19971, and 19984 of the
3 Business and Professions Code.
- 4 Reference: Sections 19844, 19852, 19857, 19858, 19859, 19862, 19863, 19870, 19875, 19878, 19880,
5 19913, 19914, 19920, 19922, 19923, 19924, 19930, 19931, 19941 and 19942 of the
6 Business and Professions Code.

7

8 **12568. Disciplinary Guidelines for Holders of Licenses, Findings of Suitability,** 9 **or Approvals**

- 10 (a) A license for an individual or any finding of suitability or approval granted by the
11 Commission shall be subject to a minimum discipline of suspension for three
12 days of normal business operation and a maximum discipline of revocation,
13 which may be stayed on terms and conditions and any monetary penalty as
14 described in section 12554(d)(7) of this chapter, if the Commission finds that the
15 holder has:
- 16 (1) Violated or is out of compliance with conditions, limitations, or orders or
17 directives imposed by the Commission, either as part of an initial grant of
18 license or registration, renewal of such, or pursuant to disciplinary action,
 - 19 (2) Engaged in any dishonest, fraudulent, or deceptive activities in connection
20 with controlled gambling,
 - 21 (3) Committed any act punishable as a crime, not otherwise listed in these
22 disciplinary guidelines, which substantially relates to the duties and
23 qualifications of the licensee or registrant, or which occurred in a gambling
24 establishment or the associated adjacent property, or
 - 25 (4) Engaged in any conduct on the premises of the gambling establishment or
26 in connection with controlled gambling which is inimical to the health,
27 welfare, or safety of the general public.
- 28 (b) A license, finding of suitability, or approval granted by the Commission shall be
29 subject to a minimum discipline of suspension for seven days of normal
30 scheduled work and a maximum discipline of revocation, which may be stayed
31 on terms and conditions and any monetary penalty as described in section
32 12554(d)(7) of this chapter, if the Commission finds that the holder has:
- 33 (1) Intentionally misrepresented a material fact on an application or
34 supplemental application for licensure or registration,
 - 35 (2) Intentionally provided untruthful responses during an investigation by the
36 Division, pursuant to Business and Professions Code, section 19827,
 - 37 (3) Willfully interfered with the performance of Commission or Division duties,
38 pursuant to Business and Professions Code, section 19944,
 - 39 (4) Committed an act prohibited by Chapter 9 (commencing with section 319)
40 and Chapter 10 (commencing with section 330) of Title 9 of Part 1 of the

- 1 Penal Code, including but not limited to operation of a banked or
2 percentage game (Penal Code, section 330), possession or sale of a slot
3 machine (Penal Code, section 330b) or agreement for slot machine payout
4 (Penal Code, section 330.1), bookmaking (Penal Code, section 337), and
5 cheating (Penal Code, section 337x),
- 6 (5) Committed extortion (as that term is defined in Chapter 7 of Title 13 of Part
7 1 of the Penal Code, commencing with section 518),
- 8 (6) Committed loan-sharking (as that term is used in Civil Code section 1916-
9 3, subdivision (b)),
- 10 (7) Conducted or negotiated illegal sales of controlled substances (as that
11 term is used in Chapter 1 (commencing with Section 11000) of Division 10
12 of the Health and Safety Code) or dangerous drugs (as that term is used in
13 Business and Professions Code, section 4022),
- 14 (8) As an owner licensee, not taken reasonable steps to prevent the crimes
15 listed in subsections (b)(5) through (b)(8) from occurring at the gambling
16 establishment, when the owner licensee knew or should have known that
17 these crimes were being committed,
- 18 (9) Committed bribery (as that term is used in Penal Code section 67 or 67.5),
- 19 (10) Committed money laundering (as that term is used in Chapter 10 of
20 Title 7 of Part 1 of the Penal Code, commencing with Section 186.9),
- 21 (11) Been convicted of a crime involving fiscal dishonesty, including but not
22 limited to tax evasion (26 U.S.C. § 7201),
- 23 (12) Been convicted in any jurisdiction of any offense involving or relating to
24 gambling, or
- 25 (13) Been found to have violated or be in violation of any law involving or
26 relating to gambling in a final administrative decision in any jurisdiction.
- 27 (c) A state gambling license, finding of suitability, or approval granted by the
28 Commission shall be subject to revocation by the Commission on any of the
29 following grounds:
- 30 (1) If the Commission finds the holder to have been convicted of a felony or a
31 crime of moral turpitude that would disqualify the holder from licensure,
- 32 (2) If the Commission finds the holder to have engaged in or committed a
33 prohibited act specified in Business and Professions Code section 19863
34 (no more than one gambling establishment at racetrack),
- 35 (3) If the Commission finds the holder no longer meets any criterion for
36 eligibility, qualification, suitability or continued operation, including those
37 set forth in Business and Professions code sections 19857, 19858, or
38 19880, as applicable, or

1 (4) If the Commission finds the holder currently meets any of the criteria for
2 mandatory denial of an application set forth in Business and Professions
3 Code sections 19859 or 19860.

4 Authority: Sections 19811, 19823, 19824, 19840, 19841, 19850, 19853(a)(3), 19854, 19859, 19875,
5 19912, 19913, 19914, 19920, 19922, 19924, 19930, 19931 19971, and 19984 of the
6 Business and Professions Code.

7 Reference: Sections 19844, 19852, 19857, 19858, 19859, 19862, 19863, 19870, 19875, 19878, 19880,
8 19913, 19914, 19920, 19922, 19923, 19924, 19930, 19931, 19941 and 19942 of the
9 Business and Professions Code.

11 **12572. Precedential Decisions.**

12 Pursuant to Government Code section 11425.60, the Commission, at a noticed
13 Commission meeting, may:

14 (a) Designate all or part of any of the following as a precedential decision:

15 (1) An adopted final decision, or

16 (2) An adopted stipulated decision pursuant to a settlement agreement.

17 (b) Reverse in whole or in part the prior designation of a decision as a
18 precedential decision.

20 Authority: Sections 19811, 19823, 19824, 19840, 19841, 19850, 19854, 19912, 19914, 19920, 19922,
21 19924, 19930, and 19971 of the Business and Professions Code.

22 Reference: Sections 19857, 19858, 19859, 19862, 19870, 19878, 19912, 19913, 19914, 19930, and
23 19931 of the Business and Professions Code. Section 11425.60 of the Government Code.

CALIFORNIA GAMBLING CONTROL COMMISSION

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**Initial Statement of Reasons**

California Code of Regulations, Title 4. Business Regulations
Division 18. California Gambling Control Commission

Chapter 10 – Discipline, Hearings, and Decisions

The Gambling Control Act¹ provides the California Gambling Control Commission (hereafter, “Commission”) the authority to discipline the Commission’s regulated community. This includes work permit holders, holders of findings of suitability or approvals, key employee licensees, registrants, licensees, and owner licensees of gambling establishments. The intent of such enforcement authority is to ensure that the industry maintains a good reputation, does not cheat or harm the public, and is made up of people of good character. Discipline for violations of law ensures that others in the regulated community do not violate the law, that the public is protected, and that any criminal or corruptive elements are excluded from the industry.

The Gambling Control Act is “an exercise in the police power of the state for the protection of the health, safety, and welfare of the people of the State of California, and shall be liberally construed to effectuate those purposes.”² The Legislative Findings and Declarations of the Gambling Control Act, Business and Professions Code, section 19801, subdivision (f), states:

Public trust that permissible gambling will not endanger public health, safety, or welfare requires that comprehensive measures be enacted to ensure that gambling is free from criminal and corruptive elements, that it is conducted honestly and competitively, and that it is conducted in suitable locations.

Business and Professions Code, section 19801, subdivision (g), further states:

Public trust and confidence can only be maintained by strict and comprehensive regulation of all persons, locations, practices, associations, and activities related to the operation of lawful gambling establishments and the manufacture and distribution of permissible gambling equipment.

¹ Business and Professions Code, section 19800 et seq.

² Business and Professions Code, section 19971.

The Commission is tasked with carrying out this legislative intent and

- Assuring that licenses, approvals, and permits are not issued to, or held by, unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.³
- Assuring that there is no material involvement, directly or indirectly, with a licensed gambling operation, or the ownership or management thereof, by unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.⁴

Pursuant to Business and Professions Code, section 19930, the Division of Gambling Control (hereafter, "Division") is charged with investigating violations of the Gambling Control Act and regulations adopted thereunder. If the Division, as a result of such investigations, determines that a license, permit, finding of suitability, or approval should be suspended or revoked, the Division (who will generally be represented by a Deputy Attorney General from the Indian and Gaming Law Section of the Office of the Attorney General) must file an accusation in accordance with the Administrative Procedure Act⁵. With regard to such an accusation, the Administrative Procedure Act provides:

A hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned shall be initiated by filing an accusation. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules. The accusation shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.⁶

The Commission, in addition to actions taken against a license, permit, finding of suitability, or approval, may require the payment of fines or penalties.

According to the Administrative Procedure Act in the California Government Code, no agency may base a penalty on a guideline unless that guideline has been adopted as a regulation.⁷ Adopting Disciplinary Guidelines in this chapter satisfies the Government Code requirement and provides notice to the industry of how violations of law will be handled by the Commission.

³ Business and Professions Code, section 19823, subdivision (a)(1).

⁴ Business and Professions Code, section 19823, subdivision (a)(2).

⁵ Government Code, section 11500 et seq.

⁶ Government Code section 11503.

⁷ Government Code, section 11425.50, subdivision (e).

The Administrative Procedure Act provides for a quasi-judicial forum to adjudicate disputes. For example, if the Division were to believe that a licensee or registrant was in violation of the law, and that licensee or registrant disputed that belief, then a hearing would be held before the Commission (or an administrative law judge sitting on behalf of the Commission), using the procedures detailed in the Government Code and regulation, to reach a Decision. If the Decision confirmed the violation of law, the penalty would be arrived at by the use of these disciplinary guidelines. Penalties are designed to be deterrents, not punishment.

The objective of a disciplinary proceeding is to protect the public, the occupation, maintain occupational integrity, its high standards, and preserve public confidence in state licensure and registration. These proceedings are not for the primary purpose of punishing an individual.⁸

A more recent court agreed:

The license revocation procedure is designed to protect the public, not to administer punishment to individual licensees. (*citation.*) As the court stated in *Small v. Smith* (1971) 16 Cal. App. 3d 450, 457, "The object of an administrative proceeding aimed at revoking a license is to protect the public, that is, to determine whether a licensee has exercised his privilege in derogation of the public interest, and to keep the regulated business clean and wholesome."⁹

The Commission has engaged in extensive outreach in developing these proposed regulations. Staff researched a number of other gaming jurisdictions as well as other California licensing agencies, and maintained a dialog with the Division to determine what offenses should be specifically listed. Staff worked closely with industry members, both informally by letters, telephone calls, and meetings, as well as formally by holding two open and publicly noticed workshops, one in February 2005 and one in July 2005, before discussing the penultimate notice draft at a regularly noticed Commission meeting on February 9, 2006.

Section 12550 is the introduction to this chapter, detailing the purpose and scope of the regulations. **Subsection (a)** indicates that this chapter applies to all types of licenses, registrations, permits, findings of suitability, or approvals issued by the Commission, which is necessary because some might think that this chapter was only applicable to cardrooms or cardroom employees.

In those cases where an immediate suspension of a license, permit, or registration is required, these regulations are not to be an impediment. **Subsection (c) of 12550** clarifies that these regulations do not limit the authority of the Commission or Division which is granted in the Business and Professions Code, to issue **either Orders of**

⁸ *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.

⁹ *Mann v. Department of Motor Vehicles* (1999) 76 Cal. App. 4th 312, 320.

Summary Suspension or Emergency Orders, respectively, to go to superior court, or to refer the matter to the appropriate agencies for further action.

Many administrative agency disputes settle before, during, or even after a formal hearing has been presented, but before a decision is issued. **Section 12552** provides a method for holders of a license or registration to settle a dispute regarding a violation without going through a formal hearing process pursuant to the Administrative Procedure Act. For example, the Division might, during an inspection or investigation, observe a violation of law. The Division would then issue a Notice of Violation which would specify the law violated and the circumstances surrounding the violation. A settlement would allow (with Commission approval) a holder of a license or registration, who admits that the violation did occur, to pay a monetary penalty instead of going through a formal hearing process. An analogy might be paying a speeding ticket when there is no dispute that the driver was going 70 in a 45 mph zone rather than going to traffic court.

Any fines or penalties collected will go into a Fines & Penalties sub-account in the General Fund. The Division may appropriate money from this account to offset costs incurred pursuant to the Gambling Control Act.¹⁰

If a holder of a license or registration disputes that there was a violation, however, the holder would so notify the Division. The Division would have the option of dropping the Notice of Violation (based on exonerating information given by the holder, perhaps) or of pursuing the violation through the formal hearing process described in this chapter.

Section 12552, subsection (b), clarifies that Commission must approve any offers to pay a penalty in lieu of the formal hearing process. If an offer is not approved within the timeframe of three Commission meetings, the Division shall proceed with the formal hearing process described in this chapter. This timeframe provides the parties with a necessary deadline for negotiation, since most settlements happen at the last minute, and also ensures that cases are not left hanging for lengthy periods of time.

Subsection (a) of 12554 provides that disputes will be handled by following the provisions of the administrative adjudication portion of the Administrative Procedure Act, Government Code sections 11500 et seq. This provides a clear set of rules for all participants to follow. For those unfamiliar with administrative hearings, additional information that the decision will be based on findings of fact, etc., is added for purposes of clarity. **Subsection (c) of 12554 also discusses the burden of proof**, which is clarified as being a “preponderance of the evidence” standard. Case law has indicated that there are different levels of proof required for different types of licensees. This clarifies for all participants what level of proof is required to prove that a licensee or registrant violated the law.

It has been generally recognized that administrative proceedings, including proceedings to revoke or suspend a license, are civil rather than criminal in nature.¹¹ Generally,

¹⁰ Business and Professions Code, section 19950.

proof in civil cases is required by a preponderance of the evidence.¹² However, in a number of situations, a greater degree of proof, usually clear and convincing evidence, is required.¹³ Thus, stating the burden of proof in regulation is necessary.

A professional license often represents the fulfillment of extensive education, training and rigorous testing. A professional licensee has an extremely strong interest in retaining the professional license that he or she worked so hard to obtain. A higher standard of proof than a preponderance of the evidence is required to revoke or suspend a professional license -- proof by clear and convincing evidence is required.¹⁴ "Clear and convincing evidence" means evidence of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the facts for which it is offered.¹⁵ The evidence must be so clear as to leave no substantial doubt and so strong as to command the unhesitating assent of every reasonable mind.¹⁶ "Clear and convincing evidence" is a higher standard of proof than proof by a "preponderance of the evidence"¹⁷ and requires a finding of high probability for the propositions advanced in an Accusation against a targeted licensee. Thus, the standard of proof in an administrative disciplinary action that seeks the suspension or revocation of a professional license, such as a doctor, lawyer, dentist, veterinarian, registered nurse, licensed vocational nurse, pharmacist, psychiatric technician, smog check technician, chiropractor, psychologist, insurance agent, real estate agent, barber, or cosmetologist, or of a teaching credential, is "clear and convincing evidence to a reasonable certainty."¹⁸

On the other hand, where an occupational or professional license may be obtained without education and training, the standard of proof required to suspend or revoke such a license is merely a "preponderance of the evidence."¹⁹ A "preponderance of the evidence" means evidence that has more convincing force than that opposed to it.²⁰

Licenses to process foods, sell vehicles, or to operate such facilities as a substance abuse treatment facility, a child day-care facility, or a health care facility all use the

¹¹ *Petrucci v. Board of Medical Examiners* (1975) 45 Cal.App.3d 83, 88 and *Borror v. Department of Investment* (1971) 15 Cal.App.3d 531, 540; Quoted in *Ettinger v. Board of Medical Quality Assurance*, 135 Cal. App. 3d 853, 855 (Cal. Ct. App., 1982)

¹² Evidence Code, section 115: Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.

¹³ *Belli v. Curtis Pub. Co.* (1972) 25 Cal.App.3d 384, 388 and *Trujillo v. City of Los Angeles* (1969) 276 Cal.App.2d 333, 343; Quoted in *Ettinger v. Board of Medical Quality Assurance*, 135 Cal. App. 3d 853, 855 (Cal. Ct. App., 1982).

¹⁴ *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889.

¹⁵ *People v. Mabini* (2001) 92 Cal.App.4th 654, 662.

¹⁶ *In re Michael G.* (1998) 63 Cal.App.4th 700, 709-710, fn 6; *In re David C.* (1984) 152 Cal.App.3d 1189, 1208.

¹⁷ BAJI No. 2.62 (8th ed. 2002) [Book of Approved Jury Instructions, Standard Jury Instructions, Civil], and CACI No. 201 [Judicial Council of California Civil Jury Instructions].

¹⁸ *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853; *James v. Board of Dental Examiners* (1985) 172 Cal. App.3d 1096, 1105; *Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035.

¹⁹ *Mann v. Department of Motor Vehicles* (1999) 76 Cal.App.4th 312.

²⁰ BAJI 2.60.

preponderance of the evidence standard.²¹ A notary public, who must take a one-day course to pass an examination and must be trustworthy and of good moral character, also has a preponderance of the evidence standard in disciplinary actions.

No formal training or examinations must be taken in order to obtain a license or registration in the gambling industry. Applicants must be honest, reputable, fiscally responsible, and trustworthy individuals – this is determined by a background investigation by the Division, for which the applicants themselves complete supplemental information forms. The background check in and of itself does not raise the standard of proof, since day care and health care facility workers must also pass similar investigations. As a nonprofessional license, the preponderance of the evidence standard is stated as the burden of proof for disciplinary actions. This is the same standard used by the Nevada Gaming Commission in their disciplinary hearings.

Section 12554, subsection (d), details the options open to the Commission for discipline. These include outright revocation, suspension, the imposition of fines or monetary penalties, and/or conditions. The Commission could, for example, find that an order of revocation should be stayed, on certain terms and conditions.

Subsection (d)(7) of 12554 provides for a stay of suspension and payment of monetary penalties. As mentioned previously, the Division might recommend that a respondent in a disciplinary action pay a monetary penalty in lieu of serving a suspension. That would ensure that employees or vendors would not be out of work for the period of a suspension for an employer's or supervisor's error, or that a city would not be out revenue taxes, if the circumstances so warrant. (An example might be a cardroom or proposition player service paying a fine instead of not conducting controlled gambling during the period of suspension.) A fine may serve as an appropriate deterrent in some instances, and the amounts are detailed. Because the fine may be based on the number of tables or gross revenue of a cardroom, or the amount of tables for which a third-party contract exists, **subsections (g) and (h)** require this information to be included in the written decision.

Along similar lines of keeping employees employed while disciplining an owner, in **subsections (e) and (f) of 12554**, the Commission could revoke a cardroom or proposition player service owner but allow a reasonable amount of time for the business to be sold. Due to the current moratorium on new cardrooms, this was a suggestion by industry, so that cities would not lose a source of revenue in the event that an owner's license were to be revoked. In the interests of parity, this option was mirrored for third-party providers of proposition player services and gambling businesses.

Cost recovery was recently added to Section 19930 of the Business and Professions Code and became effective January 1, 2005. It is included in **subsection (i) of 12554** so that decisions will include findings and orders with regard to the costs of investigation and prosecution of the case.

²¹ *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889.

Cardrooms, while under the regulatory jurisdiction of the Commission, may also be subject to regulation by other agencies. For instance, if a cardroom serves alcohol, it would also be regulated by the Department of Alcoholic Beverage Control (ABC). If it has employees, it would fall under the jurisdiction of the Labor Commissioner, etc. In the event that one incident gives rise to different agencies imposing a discipline, or in the event that a cardroom is being disciplined for more than one violation, it is necessary for the Commission decision to state whether a suspension should be concurrent or consecutive, which is indicated in **subsection (j)**.

While it may be shown in the course of formal hearing that a holder of a license, work permit, or registration violated a particular law, the penalty for that violation may be either lessened/mitigated by a showing of the holder's cooperation, clean history, restitution, etc., or heightened/aggravated by a showing of the holder's lack of cooperation, previous history of violations, refusal to make restitution, etc. **Section 12556 thus allows for factors in mitigation or aggravation** of the penalty. Many of these factors were added in looking at other jurisdictions, or from input by industry members during our workshops or informal comment periods. **Subsection (p)** allows for the respondent to bring in any relevant evidence, to cover additional fact patterns not otherwise accounted for in the listed factors in mitigation.

Sections 12558-12568 are disciplinary guidelines for various types of licenses, registrations, and work permits.

Many holders of permits, licenses, registrations, or entities requiring findings of suitability or approval have already been exposed to disciplinary guidelines (and, possibly, the administrative adjudication process) by virtue of interactions with the Department of Alcoholic Beverage Control (ABC) or other regulatory agencies. The ABC guidelines were considered in the drafting of these proposed disciplinary guidelines.

Aggravating and mitigating factors would be taken into account (for example, this is the third violation in two months or perhaps there was an honest misunderstanding). In addition, references to subsection (d)(7) of section 12554 indicates that a monetary penalty may be imposed in lieu of serving an actual suspension.

These guidelines were written with a range of penalties to take into account the totality of the situation and the seriousness of the offense. The listed offenses came from industry, from other gambling jurisdictions, and from the Division, based upon the violations of law most commonly seen in the field of controlled gambling. Because the Commission is charged with keeping unsuitable characters out of the gambling industry, the Commission has determined that anything which would preclude a person from initially obtaining a gambling license, registration, etc., such as a felony conviction, should also be a ground for revoking the license, registration, etc., in the interests of protection of the public.

Subsection (a) of 12566, disciplinary guidelines for gambling establishments, looks at small infractions, and takes into account the size and income of the

establishment, as required by the Gambling Control Act, rather than set a fixed monetary penalty that may seem enormous to a small cardroom and a pittance to a large cardroom. The maximum suspension would be one day of normal business operation. More serious violations are in **subsection (b)** and carry a maximum seven-day suspension, which may be stayed on payment of the monetary penalty in subsection (d)(7) of section 12554.

Allowing **minors on the premises**, especially if they engage in drinking or gambling, is a very real issue with regard to public safety and is treated very seriously in other states and is addressed in **Section 12566, subsections (b)(9) and (11)**. Recently, a Nevada casino stipulated to a \$10,000 fine as a result of allowing a minor to gamble and drink in their casino.²² This incident was caught by the casino and self-reported to regulators. In 1997, a casino in Missouri was fined \$250,000 after regulators caught a 12-year-old girl playing the slots in their riverboat casino. After other allegations in 2000, including allowing a 16-year-old girl and two other minors to gamble on their riverboats, the casino surrendered its Missouri gambling licenses and sold its gambling interests.

In a similar vein of protecting minors, the Department of Alcoholic Beverage Control (ABC) has a penalty of a 15-day suspension for the first violation of allowing persons under 21 to consume or purchase alcohol in a licensed establishment, with a second violation within 36 months having a penalty of 25 days suspension and a third violation within 36 months being cause for revocation.

The felony of “**loan-sharking**” is listed as a reason for suspension in **Section 12560, subsections (b)(15) and (d)(4); Section 12562, subsections (b)(9) and (d)(4); and Section 12568, subsection (b)(6)**. Loan-sharking is described as follows:

Any person who willfully makes or negotiates, for himself or another, a loan of money, credit, goods, or things in action, and who directly or indirectly charges, contracts for, or receives with respect to any such loan any interest or charge of any nature, the value of which is in excess of that allowed by law, is guilty of loan-sharking, a felony, and is punishable by imprisonment in the state prison for not more than five years or in the county jail for not more than one year. This subdivision shall not apply to any person licensed to make or negotiate, for himself or another, loans of money, credit, goods, or things in action, or expressly exempted from compliance by the laws of this state with respect to such licensure or interest or other charge, or to any agent or employee of such person when acting within the scope of his agency or employment.

This was enacted as an initiative measure by the people of the State of California in the Statutes of 1919, and amended by Statutes of 1970, chapter 784, section 1. While it may be found in West’s California Codes as Civil Code section 1916-3, it is found in Deering’s Uncodified Initiative Measures and Statutes Code on page 35 and in Appendix I of the Deering’s Civil Code (in the pocket supplement to the last volume).

²² “Venetian agrees to \$10,000 fine over underage gambling: Las Vegas Sun, January 21, 2005. Available at <http://www.lasvegassun.com/sunbin/stories/gaming/2005/jan/21/518162515.html> or in Attachment A to this Initial Statement of Reasons.

Section 12572 provides for the Commission's adoption of all or part of a final decision or stipulated decision pursuant to a settlement agreement as a **precedential decision**. Precedential decisions are described in Government Code 11425.60, and are a way for an agency to indicate that a particularly significant legal or policy determination of general application would be binding on the regulated community. For instance, the Commission could determine, during the course of a formal hearing, that a certain crime was a "crime of moral turpitude" with regard to those involved in gaming activity or gambling establishments. Rather than repeat the legal arguments the next time this certain crime came up in a hearing, the Commission could adopt the first decision, in whole or in part, which indicated the findings and conclusions regarding the crime. Any precedential decisions adopted would be maintained in an index, on the Commission's web page, for the public to access.

Required Determinations

LOCAL MANDATE

These regulations do not impose a mandate on local agencies or school districts.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATIONS AND REASONS FOR REJECTING THOSE ALTERNATIVES.

The Commission is not aware of any reasonable alternatives that would as effectively achieve the regulatory purpose of processing additional temporary table applications and achieving compliance in situations where temporary tables have been requested.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESSES

The Commission is not aware of any reasonable alternatives that would lessen any adverse impact on small businesses.

IMPACT ON PRIVATE PERSONS

The Commission is not aware of any reasonable alternatives that would be more effective or as effective and less burdensome to private persons.

IMPACT ON BUSINESS

The Commission has made a determination that the proposed regulatory changes will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.